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HAWAII LABOR
RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2009-3
)	Inspection No. 311433221
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
Complainant,)	AND ORDER
)	
vs.)	
)	
COMMERCIAL ROOFING &)	
WATERPROOFING HAWAII, INC.,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS
("Director") and Respondent COMMERCIAL ROOFING & WATERPROOFING HAWAII,
INC. ("Respondent") having reached a full and complete settlement of the above-captioned
contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate
and agree as follows:

On or about July 7, 2008 through January 7, 2009, the Director, by and through
the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected

Respondent's workplace located at 99-1230 Waiua Place, Honolulu, Hawaii 96814.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on January 7, 2009 ("Citation"), Inspection No. 311433221, to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$6,000.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 99-1230 Waiua Place, Honolulu, Hawaii 96814.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten days after the date this Agreement is filed; failure to timely do so may result in additional penalties or follow up inspections.
5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See* Exhibit A.
6. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation,

as amended, shall become a final order of the Director.

7. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

9. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law.


10. Any disclosure of HIOSH's file for this case will only be done in accordance with the requirements of HRS Chapters 396 and 92F, or any court order.

11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

12. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

DATED: Honolulu, Hawaii, July 16, 2009.

APPROVED AS TO FORM:



JEFFREY S. HARRIS, ESQ.
Attorney for Respondent

RESPONDENT COMMERCIAL ROOFING &
WATERPROOFING HAWAII, INC.

By: 


Its Guy Akasaki, President

APPROVED AS TO FORM:



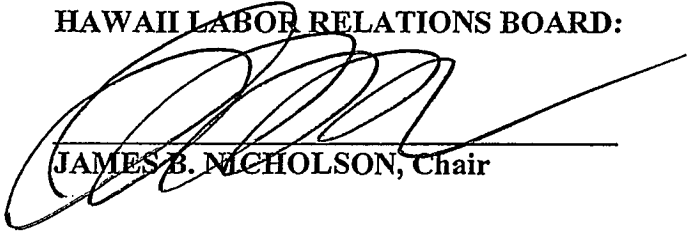
J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



DARWIN L.D. CHING

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:



JAMES B. NICHOLSON, Chair

ORDER NO. 332

DATED: July 16, 2009

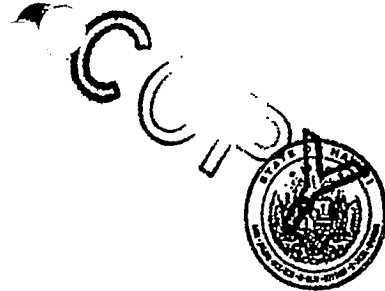


EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

In re: Director, Dept. of Labor and Indus. Relations v. Commercial Roofing & Waterproofing, Inc., Case No. OSH 2009-3, Stipulation and Settlement Agreement; Exhibit "A"; Approval And Order.

**State of Hawaii**

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104

Certified Number: 7006 3450 0003 7802 9301

Citation and Notification of Penalty**To:**

Commercial Roofing & Waterproofing Hawaii Inc
and its successors
2002 Kahai St
Honolulu, HI 96819

Inspection Number: 311433221 (Soon Hye Edgerton)
Inspection Date(s): 07/07/2008- 01/07/2009
Issuance Date: 01/07/2009
OSHC ID: E4528
Optional Report No.: 04808
Inspection Type: Fatality/Catastrophe
Scope of Inspection: Comprehensive Inspection

Inspection Site:

99-1230 Waiua Pl
Honolulu, HI 96814

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Commercial Roofing & Waterproofing Hawaii Inc
2002 Kahai St
Honolulu, HI 96819

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/07/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311433221

Inspection Dates: 07/07/2008 - 01/07/2009

Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Commercial Roofing & Waterproofing Hawaii Inc
Inspection Site: 99-1230 Waiua Pl, Honolulu, HI 96814

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 1a Type of Violation: **Serious**

29 CFR 1926.502(h)(1)(ii) [Refer to chapter 12-121.2, HAR] was violated because:

The designated safety monitor/foreman did not warn the employee of the hazardous condition when he crossed the warning line, or when he was working outside the warning line. As a result of this failure, the employee was fatally injured from a fall through a 3 x 5 foot roof opening.

29 CFR 1926.502(h)(1)(ii) states "The safety monitor shall warn the employee when it appears that the employee is unaware of a fall hazard or is acting in an unsafe manner;"

Location: Project site at 99-1230 Waiua Pl

Date By Which Violation Must be Abated:

01/12/2009

Penalty:

\$ 3,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311433221
Inspection Dates: 07/07/2008-01/07/2009
Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Commercial Roofing & Waterproofing Hawaii Inc
Inspection Site: 99-1230 Waiua Pl, Honolulu, HI 96814

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1926.502(h)(1)(v) [Refer to chapter 12-121.2, HAR] was violated because:

The designated safety monitor/foreman was distracted from his monitoring duty by other responsibilities. During this distraction, an employee crossed the warning line and picked up a 3 x 5 foot metal panel and fell through the roof opening.

29 CFR 1926.502(h)(1)(v) states "The safety monitor shall not have other responsibilities which could take the monitor's attention from the monitoring function."

Location: Project site at 99-1230 Waiua Pl

Date By Which Violation Must be Abated:

01/12/2009

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Commercial Roofing & Waterproofing Hawaii Inc
Inspection Site: 99-1230 Waiua Pl, Honolulu, HI 96814

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1926.503(a)(1) [Refer to chapter 12-121.2, HAR] was violated because:

The employer failed to train each employee who was exposed to fall hazards.

29 CFR 1926.503(a)(1) states "The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

01/12/2009
\$ 3,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311433221
Inspection Dates: 07/07/2008 - 01/07/2009
Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Commercial Roofing & Waterproofing Hawaii Inc
Inspection Site: 99-1230 Waiua Pl, Honolulu, HI 96814

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1926.503(a)(2)(iv) [Refer to chapter 12-121.2, HAR] was violated because:

The employer failed to train each employee on his role in the safety monitoring system when this system is used.

29 CFR 1926.503(a)(2)(iv) states "The employer shall assure that each employee has been trained, as necessary, by a competent person qualified in the following areas: The role of each employee in the safety monitoring system when this system is used."

Location: Establishment

Date By Which Violation Must be Abated:

01/12/2009

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311433221
Inspection Dates: 07/07/2008 - 01/07/2009
Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Commercial Roofing & Waterproofing Hawaii Inc
Inspection Site: 99-1230 Waiua Pl, Honolulu, HI 96814

Citation 2 Item 1 Type of Violation: Other

29 CFR 1926.502(f)(2)(i) [Refer to chapter 12-121.2, HAR] was violated because:

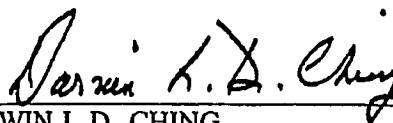
The warning line was not flagged at not more than 6 feet intervals with high-visibility material.

29 CFR 1926.502(f)(2)(i) states "Warning lines shall consist of ropes, wires, or chains, and supporting stanchions erected as follows: The rope, wire, or chain shall be flagged at not more than 6 feet intervals with high-visibility material;"

Location: Project site at 99-1230 Waiua Pl

Date By Which Violation Must be Abated:
Penalty:

01/12/2009
\$ 0.00



DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Commercial Roofing & Waterproofing Hawaii Inc
Inspection Site: 99-1230 Waiua Pl, Honolulu, HI 96814
Issuance Date: 01/07/2009

Summary of Penalties for Inspection Number 311433221

Citation 1, Serious	= \$	6,000.00
Citation 2, Other	= \$	0.00
TOTAL PENALTIES	= \$	6,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.